



Kansas Legislative Research Department

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STATE-LEVEL REGULATION OF ECONOMIC TRANSACTIONS WITH FOREIGN ADVERSARIES

In a recent trend, states are seeking to limit economic interactions with countries of concern within their borders. This trend raises several questions:

- Why are states concerned by foreign transactions within their state?
- Why are states acting in an area typically considered under federal jurisdiction?
- What actions are states taking?
- How are state and federal courts interpreting these actions?

This memorandum will address those questions by looking at the:

- Risks to states posed by countries of concern;
- Federalism concept and the federal government's willingness to let states act in this area;
- Relevant enacted state statutes; and
- Relevant court decisions.

The Risk to States from Countries of Concern

In recent legislative sessions, states have begun addressing potential threats posed by foreign adversaries. Typically, states have labeled these adversaries as "countries of concern" (*Note: this labeling typically is consistent with [15 CFR 791.4](#)*) and limiting the transactions conducted by governments, entities, and agents from these countries. As defined by other states, these countries typically include:

- China (including Hong Kong and excluding Taiwan);
- Cuba;

- Iran;
- North Korea;
- Russia;
- Syria; and
- Venezuela under the Maduro Regime.

States are addressing perceived threats that typically coalesce around land ownership, data privacy, and investment or procurement. To mitigate these threats, states have enacted laws to restrict agricultural land purchases, land ownership within proximity to critical infrastructure and military installations, activities involving personal or proprietary data, third-party litigation funding, and investment or procurement by entities and individuals from these countries.

Federalism and Federal Policy

With Congressional gridlock, some states are acting on their own to address the potential risks from countries of concern. These actions seem to intrude into the federal government's jurisdiction and violate the federalism concept found in the *U.S. Constitution* and acknowledged by the U.S. Supreme Court.

Federalism Overview

In 1991, the Supreme Court ([*Gregory v. Ashcroft*, 501 U.S. 452, 457](#)) held that the *U.S. Constitution* establishes a “system of dual sovereignty between the States and the Federal Government.” This dual sovereignty is typically referred to as “federalism.” State and local governments were intended to have policing powers (day-to-day government), while the federal government was to provide for defense, foreign relations, and facilitating a common economic market for the states.

Why Do We Have Federalism?

Federalism offers the following benefits:

- It provides a check on abuses of government power by allocating a healthy balance of power between the states and the federal government (*Gregory*);
- It harmonizes access to resources while providing administrative decentralization;
- It allows local governments to govern issues where there is enough variance between states to preclude a national approach;
- It provides for states to experiment with new programs or policies; and

- It increases the accountability of elected officials.

Where Does the Federalism Concept Come From?

Federalism refers to the dual sovereignty that federal and state governments have over their citizens. The *U.S. Constitution* provides for federalism in several places:

- The Tenth Amendment provides that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
- The Supremacy Clause in Article VI states federal law is superior to state law.
- The Commerce Clause in Article I grants Congress the authority to legislate on matters concerning interstate commerce. The U.S. Supreme Court has held that Congress has authority to regulate purely intrastate economic activities that substantially affect interstate commerce in the aggregate ([*United States v. Lopez*, 514 U.S. 549 \(1995\)](#)).
- The Fourteenth Amendment also grants Congress the power to enforce that Amendment’s guarantees against the states through the enactment of appropriate legislation to prevent states from depriving people of their constitutional rights. (Note: Claimants in the *Shen v. Simpson* case discussed below make Fourteenth Amendment arguments against the Florida law that is barring their transaction.)
- The Necessary and Proper Clause augments Congress’ enumerated powers by allowing the federal government to enact appropriate laws that are plainly adapted to achieve a legitimate end within its enumerated powers, like national security.

Related to countries of concern, it is currently unclear whether the power to regulate these types of transactions falls within federal or state law. With no federal laws currently enacted, states have enacted their own legislation.

Federal Laws and Regulations Related to Countries of Concern

Legislative Action

Congress could use its power to regulate foreign commerce by enacting legislation that preempts state law regulating transactions with foreign entities in the United States. Several Congressional bills are pending:

- [Amending the Defense Production Act of 1950 \(H.R. 1448\)](#);
- [Foreign Adversary Risk Management Act \(“FARM Act,” S. 68\)](#);

- [Preemption of Real Property Discrimination Act \(H.R. 3697\)](#);
- [Protecting our Land Act \(H.R. 212\)](#); and
- [Soil Act of 2023 \(S. 1066\)](#).

Currently, no federal law comprehensively regulates such transactions. However, the President has historically taken action through Executive Order, such as establishing an interagency committee.

Committee on Foreign Investment in the United States

The Committee on Foreign Investment in the United States (CFIUS) was established in 1975 under [Executive Order 11858](#) and is given statutory authority from Section 721 of the Defense Production Act, as amended and codified in [50 USC 4565](#). The Committee is chaired by the Secretary of the Treasury and consists of 11 regular members. This interagency committee serves the President by reviewing foreign investments in the United States that may pose national security risks. The Committee can review any foreign investment transaction that falls within its statutory realm.

When CFIUS determines that a transaction poses a sufficient national security risk, it can impose mitigation measures and make recommendations to the President on whether to prohibit or suspend the transaction. The President has ultimate authority to prohibit or suspend a covered transaction if he or she finds there is credible evidence that the transaction would threaten to impair national security and that other laws do not provide adequate and appropriate authority to protect the United States.

Presidents have used this authority to prohibit planned transactions and to require parties to divest or unwind completed transactions. Since CFIUS' formation, the President has prohibited seven transactions:

- MAMCO Manufacturing (1990);
- Four U.S. wind farm project companies (2012);
- Aixtron (2016);
- Lattice Semiconductor Company (2017);
- Qualcomm (2018);
- StayNTouch (2020); and
- Musical.ly (2020).

Unlike the legislative branch, the federal executive branch has issued direct policy that affects transacting with countries of concern.

Executive Action

Executive Order

The Biden Administration, on February 28, 2024, issued [Executive Order 14117](#) on “Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern.”

Under the Order, the U.S. Attorney General is directed to issue regulations that prohibit or otherwise restrict U.S. persons from engaging in any acquisition, holding, use, transfer, or transportation of, or dealing in, any property in which a foreign country has an interest in a transaction involving U.S. government-related data or bulk sensitive personal data.

The Order states the banning of such transactions is necessary because they may pose an unacceptable risk to the national security of the United States since the transaction may enable countries of concern to access Americans’ personal data or U.S. government-related data.

An Unlikely Pairing: State Department and Local Governments

On October 2, 2022, the U.S. Secretary of State institutionalized the State Department’s Subnational Diplomacy Unit (Unit). According to the State Department, the Unit does important work to connect foreign policy with the American people through city, state, and local leaders across the nation. The Unit’s website states that “it supports U.S. national security priorities by integrating local ideas into foreign policy and fostering connections among cities, municipalities, and communities in the United States and abroad.”

Ambassador Nina Hachigian stated her team is “supporting and encouraging U.S. local leaders to engage internationally and with the Department by providing them with capacity, guidance, and greater connectivity to cities and states.”

Even though the State Department is working to improve foreign policy collaboration on the local level, several states are addressing their perceived foreign priorities in a different manner.

State Actions

In 2024, several states enacted legislation targeting countries of concern and the relevant risks posed to their state.

Kansas

In the 2024 session, the Kansas Legislature considered three main bills related to countries of concern. H. Sub for SB 172 would have prohibited non-residential land ownership by foreign principals of countries of concern within a certain radius of all military installations in Kansas and adjacent states. H. Sub for SB 271 would have prevented all government entities in Kansas from procuring critical components used in drones made in countries of concern and would have prohibited state agencies from entering into a contract or agreement to procure final or finished goods or services from certain foreign principals. These bills were vetoed by the Governor.

HB 2711

[HB 2711](#), as enacted, creates the Countries of Concern Divestment Act, which requires state-managed funds' divestment from investments with countries of concern and prohibits investments and deposits with a bank or company domiciled in a country of concern. The provisions of the Act expire on July 1, 2029.

Other States

The following table is a summary of enacted country of concern legislation in 2024 by other states. A summary of bills from each state follows the table.

State	Real property	Investing & procurement	Data privacy
Florida		X	
Georgia	X		
Idaho			X
Indiana	X	X	
Louisiana	X	X	
Mississippi	X	X	
Maine		X	
Nebraska		X	
Wyoming	X		

Real Property

Georgia

[SB 420](#) prevents any nonresident alien from acquiring any possessory interest in agricultural land or land within a ten-mile radius of any military base, military installation, or military airport. The bill does not apply to residential property.

A “nonresident alien” is defined as:

- A foreign government designated as a foreign adversary by the U.S. Secretary of Commerce pursuant to 15 CFR Section 7.4;

- A business entity that is domiciled in a country designated as a foreign adversary; or
- Any natural person who is not a U.S. citizen or legal resident, is an agent of a foreign government designated as a foreign adversary, and has been physically absent from the United States for more than 6 of the most-recent 12 months preceding the acquisition or physically absent from Georgia for more than 2 months out of the most-recent 12 months preceding the acquisition.

The nonresident alien may acquire a possessory interest as a security for indebtedness, by devise or inheritance, collection of debt, or any enforcement of a lien or claim. For those interests, the nonresident alien must dispose of the interest in one or two years, depending on the acquisition method.

Indiana

[HB 1183](#) prevents any prohibited person from acquiring real property located in Indiana and within a ten-mile radius of a military installation. The restriction is not retroactive and is not applicable to:

- Residential property;
- Transactions involving an individual with a dual U.S. citizenship and citizenship in China, Iran, North Korea, Russia, or a country designated as a threat to critical infrastructure by the government, or
- Any individual who is a lawful permanent resident of the United States.

A “prohibited person” is defined as:

- An individual who is a citizen of a foreign adversary as defined by 15 CFR 7.4;
- A business entity that is wholly owned by, or the majority of stock or other ownership interest of the business entity is held or controlled by, individuals who are citizens of a foreign adversary or directly controlled by the government of a foreign adversary or headquartered in a foreign adversary.
- This definition does not include any individual who holds a dual citizenship or is a lawful permanent resident of the United States.

The bill also prevents a prohibited person from acquiring or leasing any agricultural land in Indiana. The prohibition does not apply to:

- Agricultural land that has not had agricultural activity in the last five years unless recognized by the U.S. Department of Agriculture’s Farm Service Agency as farmland; or

- Renewal of agricultural land lease that is in place prior to July 1, 2024, if the acreage and description of the agricultural land subject to the lease does not change.

The bill requires the Indiana Attorney General to investigate an alleged violation and authorizes the Attorney General to issue subpoenas. Violation of the act requires divestiture of the property. Divestiture proceeds will be used to pay for costs of receivership and sale, to lienholders in priority, with any remaining proceeds being transferred to the state general fund.

Louisiana

[HB 238](#), on and after August 1, 2024, will prohibit foreign adversaries from acquiring any interest in agricultural land. A foreign adversary is a foreign nongovernment person or foreign government identified as a foreign adversary pursuant to 15 CFR 7.4, including the People's Republic of China and the Hong Kong Special Administrative Region, Republic of Cuba, Islamic Republic of Iran, Democratic People's Republic of Korea, Russian Federation, and Venezuela under the leadership of Nicolas Maduro. A "prohibited foreign actor" means a business entity in which a foreign adversary has a controlling interest.

This bill does not apply to:

- Legal permanent residents with a lawful presence in the United States;
- Entities if the property right is guaranteed by a treaty of the person's country of origin that affords certain real estate rights to U.S. citizens;
- A title to agricultural land if held as a security to indebtedness or real estate acquired upon collection of a debt;
- A foreign business entity that is a religious, educational, charitable, or scientific corporation; or
- Inherited land, or land received by such foreign business entity as payment for a debt, if sold or transferred within five years.

Violation of the act will require divestiture of the property within one year. If not divested, the entity is subject to a civil penalty of \$50,000. The Louisiana Attorney General will have the authority to bring injunctive relief to enjoin a sale or lease prior to the transfer of the property. The Attorney General may investigate a transaction if the Attorney General believes it to be in the public interest to ascertain whether a foreign adversary or prohibited foreign actor is attempting to enter into a transaction.

Mississippi

[SB 2519](#), the Mississippi Foreign Land Ownership Act, places certain restrictions on certain types of land purchases, including, forestry, agricultural, industrial, and residential purposes made by a nonresident alien. A "nonresident alien" includes:

- An individual domiciled in a country who is designated as a foreign adversary by the U.S. Secretary of Commerce and is neither a U.S. citizen nor a resident of the United States;
- A business entity that is domiciled in a foreign adversary or domiciled within the United States but is wholly or majority owned by any entity domiciled in a foreign adversary, with certain exceptions; or
- A foreign adversary designated by the U.S. Secretary of Commerce.

The bill provides certain exceptions to land acquired by nonresident aliens to secure a debt, enforce a payment, or through inheritance.

Wyoming

[SF 77](#) requires the Wyoming Office of Homeland Security to investigate any conveyances, leases, and leasehold interest within or near critical infrastructure as to whether the interest may result in a threat to national or state security, and whether the interest holder involves a foreign government or foreign nongovernment person determined to a foreign adversary as specified in 15 CFR 7.4 or as a state sponsor of terrorism as designated by the U.S. Secretary of State under the federal Export Administration Act of 1979, the Foreign Assistance Act of 1961, the Arms Export Control Act, or any other provision of federal law.

Investing & Procurement

Florida

[HB 1363](#) prohibits governmental entities from knowingly entering into or renewing contracts to procure school bus infraction detection systems, speed detection systems, traffic infraction detectors, or any other camera system used to enforce traffic restrictions if the vendor is owned by, or has a controlling interest held by, the government of a foreign country of concern.

Indiana

[HB 1160](#) prohibits commercial litigation financing that is directly or indirectly financed by a foreign entity of concern. A “foreign entity of concern” means a partnership, association, corporation, organization, or other combination of persons that is:

- Organized or incorporated in a foreign country of concern;
- Owned or controlled by the government, a political subdivision, or a political party of a country of concern; or
- Owned, organized, or controlled by or affiliated with a foreign organization that has been placed on the federal Office of Foreign Assets Control Specially Designated Nationals and Blocked Persons List or designated by the U.S. Secretary of State as a foreign terrorist organization.

The bill defines a “foreign country of concern” as a foreign government listed in 15 CFR 7.4 or designated as a threat to critical infrastructure by the governor.

Louisiana

[SB 355](#) limits third-party litigation agreements and mandates certain reporting involving foreign entities. The bill defines a “foreign entity” as an entity owned or controlled by the government of a foreign country of concern or a combination of persons organized under the law of or having its principal place of business in a foreign country of concern. A “foreign country of concern” means a foreign government listed in 15 CFR 7.4, including any agency or other entity of significant control of such foreign country of concern.

Maine

[SP 374](#) prohibits contracting, using, or purchasing information or communications technology or services with foreign adversary business entities.

The bill defines a “foreign adversary business entity” as any entity engaged in commerce organized under the laws or rules of a foreign adversary, owned or controlled by a foreign adversary, or domiciled within the geographic borders of a foreign adversary.

A “foreign adversary” means a foreign government or nongovernment person pursuant to 15 CFR 7.4. The bill requires a person submitting a bid or proposal for contract with the state for goods or services to certify the person is not a foreign adversary business entity.

Nebraska

[LB 1300](#) creates the Foreign Adversary Contracting Prohibition Act. It prevents public entities from entering into any contract or renewal with a scrutinized company for any technology-related product or service, or whose funds transfer would go to a scrutinized company.

The bill defines a “scrutinized company” as any business entity or association, including subsidiaries, affiliates, or other business association:

- Organized under the laws of, or having its principal place of business in, a foreign adversary;
- Company owned or operated by the government of a foreign adversary; or
- Any company that sells to a public entity a technology-related product or service that originates with a company described above without incorporating that product or service into another final product of service.

The bill defines “foreign adversary” as determined pursuant to 15 CFR 7.4.

[LB 1370](#) requires any electric generation facility within a ten-mile radius of a military installation to certify that no materials, electronics, or other components are manufactured by

any foreign government or foreign nongovernment person determined to be a foreign adversary pursuant to 15 CFR 7.4.

Data Privacy

Idaho

[HB 670](#) states that it intends to protect the genomic data of Idaho residents from companies from adversary countries. The bill prevents medical and research facilities from using genetic sequences or operational or research software used for genetic analysis if the final product is produced in or by a foreign adversary, or an entity owned by, domiciled in, or affiliated with a foreign adversary.

The bill defines a “foreign adversary” as any agent or other entity under significant control of the following:

- People’s Republic of China;
- Russian Federation;
- Islamic Republic of Iran;
- Democratic People’s Republic of Korea (North Korea);
- Venezuelan regime of Nicolas Maduro; and
- Syrian Arab Republic.

Judicial Review of State Actions

Even though several state bills have been enacted in 2024, these and prior laws have been challenged in federal court. At least one bill is the subject of a case that is pending a decision by a District Court of Appeals.

Shen v. Simpson (N.D. Fla. 2023)

In 2023, two Chinese nationals filed suit to challenge a Florida law that generally prohibits non-citizens domiciled in China or other countries of concern from acquiring any interest in real property in the state. The law provides limited exceptions for the purchase of one residential property that is not on or within five miles of any military installation in the state.

The plaintiffs sought injunctive relief on the basis the law violated the Equal Protection and Due Process clauses, the Fair Housing Act, and the Supremacy Clause. The district judge denied the relief and the plaintiffs appealed to the 11th Circuit Court of Appeals.

A panel of 11th Circuit Court of Appeals judges granted in part the injunctive relief. The Court determined the appellants were likely to succeed on their claim that the Florida law is

preempted by federal law, specifically [50 USC 4565](#), known as the Foreign Investment Risk Review Modernization Act of 2018. One of the judges issued a concurring opinion stating the appellants should also have the relief granted because the Florida law violates the Equal Protection Clause.

The Court heard oral arguments in April 2024 and is expected to issue an opinion on the merits of the case at a later date.